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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1967

WILLIAM GEORGE MIENTKE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
Assistant Attorney General,

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1135

WILLIAM GEORGE MIENTKE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a nonjury trial in the United States District Court for the Western District of Wisconsin, petitioner, a conscientious objector, was convicted of wilfully disobeying the order of his local Selective Service board to report for civilian work in lieu of induction (50 U.S.C. App. 462). On June 2, 1967, he was sentenced to two years' imprisonment. The court of appeals affirmed (Pet. App. B, 19-23).

After his initial classification as a conscientious objector (I-O), petitioner requested and obtained an

appearance before his local board in support of his claim that he was entitled to a IV-D (ministerial) classification. At the interview (R. Ex. 1, p. 81) petitioner was asked and answered several questions relating to his position in the Jehovah's Witnesses and his secular activities. The local board decided to continue him in I-O and the appeal board subsequently affirmed this classification.

Petitioner's sole contention is that the court below erred in rejecting his claim that the Fifth and Sixth Amendment safeguards applicable to criminal prosecutions—*i.e.*, the right to be represented by counsel, to confrontation of witnesses, and to be given the warnings spelled out in *Miranda* v. *Arizona*, 384 U.S. 436—apply to a registrant's personal appearance before a local Selective Service board for the purpose of reviewing his classification. As the court of appeals held, however (Pet. App. B, 22-23), the fact that a registrant may later be prosecuted criminally if he fails to perform the duties imposed on him in his classification does not render the proceeding before the local board criminal in nature. The purpose and effect of the personal appearance is not to impose a punishment but simply to determine the proper status of the registrant. As the courts have uniformly held, there is no right to counsel or to be confronted with witnesses at such a proceeding.[1] *United States* v.

[1] The record does not reveal that petitioner even requested counsel at the time of his personal appearance before the local board. He is therefore without standing to challenge the regulation (32 C.F.R. 1624.1) prohibiting a registrant at such a hearing from being represented by counsel.

We also note that, at the trial, the district judge, although

Capson, 347 F.2d 959 (C.A. 10), certiorari denied, 382 U.S. 911; *Imboden* v. *United States*, 194 F.2d 508, 513 (C.A. 6), certiorari denied, 343 U.S. 957; *United States* v. *Pitt*, 144 F.2d 169, 172 (C.A. 3). The *Miranda* warnings are not required for the additional reason that a registrant appearing by his request at a classification hearing can hardly be said to be in custody.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.

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not required to do so, permitted the defendant to present evidence in support of his claim that he should have been accorded the ministerial exemption (App. 15). The court concluded (App. 16) that the board's rejection of that claim was well founded (App. 16).

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